

SENATE HEALTH & WELFARE COMMITTEE
Wednesday, January 27, 2016

ATTACHMENT 1

The Honorable Lee Heider
Chairman, Senate Health and Welfare
Idaho Statehouse, Room EW14
P.O. Box 83720
Boise, ID 83720-0038

Re: Docket No. 16-0219-1501 Food Safety and Cottage Foods Rulemaking

The Northwest Food Processors Association (NWFP) represents food processing companies across Idaho. Our members place the highest priority in providing food products to consumers that are worthy of their trust that consuming them is safe. It is for this reason that NWFP is submitting these comments with regard to proposed amendments to the Idaho "Food Safety and Sanitation Standards for Food Establishments," IDAPA Chapter 16.02.19, also known as the Idaho Food Code.

NWFP vigorously supports adoption of the 2013 Food Code by Idaho Department of Health and Welfare (IDHW). The 2013 edition is the eighth edition of the Food Code and represents the latest thinking by food safety professionals across the country about practical, science-based procedures for mitigating foodborne illness. It is the gold standard for protecting people consuming food products that they purchase at retail or foodservice establishments and helps to ensure them that they will have equal protection from foodborne illness whether they are in Boise, Blackfoot, New York, Los Angeles or any place else in the country.

The value of a national standard for safe food practices is that foodborne illness knows no boundaries. Consumers should not have to grapple with a patchwork of different food safety standards depending on where they are. As the Legislature reviews these updates, we would express our support for your adoption of this portion of the rule changes as the agency is helping to protect Idahoans from foodborne illness when they are at home, at their grocery store, in a restaurant, or when they travel, by recognizing the need for and supporting consistency in food safety standards throughout the country.

However, NWFP members are concerned that the agency's concurrent attempt to exempt cottage food establishments from these standards is counterproductive to consistent, science-based approach to public health and endangers Idahoans. We oppose this action because it jeopardizes the confidence in the safety of the food supply that food processors work so hard to establish and maintain and the strength of the State regulatory systems upon which food processors rely.

Section 001.04(h) of the docket proposes to add to establishments not subject to the rules:

Cottage food operations, when the consumer is informed and must be provided contact information for the cottage food operations as follows:

- *By a clearly legible label on the product packaging; or a clearly visible placard at the sales or service location that also states:*
- *The food was prepared in a home kitchen that is not subject to regulation and inspection by the regulatory authority; and*
- *The food may contain allergens.*

NWFPA opposes this exemption for these reasons:

- 1. The home kitchen operation, which is not subject to regulation and inspection by the regulatory authority, is not consistent with best practices recommendations by the nation's regulatory food safety experts.**

This exemption is contrary to the recommendation of the very Food Code that the Idaho Department of Health and Welfare (IDHW) proposes to adopt in this same docket. Chapter 3 of the 2013 Food Code says the following:

“Food should be purchased from commercial supplies under regulatory control. Home kitchens, with their varieties of food and open entry to humans and pet animals, are frequently implicated in the microbial contamination of food. Because commercial items seldom are eaten right away, the home kitchen's limited capacity for maintaining food at proper temperatures may result in considerable microbial growth and toxin production by microorganisms introduced through the diverse sources of contamination. Controlled processing is required for the safe preparation of food entering commerce.”

Chapter 3, 2013 Food Code

The Association of Food and Drug Officials (AFDO), which is a national association representing state and federal food safety regulatory professionals from across the country, has recognized the controversial and difficult nature of providing oversight to these businesses which is both sensitive to their unique needs while being reasonably protective of public health. To that end, they have developed a guidance document for best practices in the regulation of cottage food businesses. The intent of this document, like the Food Code itself, is to provide uniform standards for adoption across the country.

The AFDO guidance has among its prerequisite requirements the following:

All cottage food operations must be permitted annually by the regulatory authority on forms developed by that authority. The permit will identify a specific listing of the food products allowed to be produced by the cottage food operation.

Prior to permitting, the regulatory authority will examine the premises of the cottage food operation to determine it to be in substantial compliance with the requirements of this guidance document.

These requirements are warranted for public health safety, not only to function as an enforcement mechanism to the business, but to serve as educational vehicles to assist the business owner in establishing a operation that will remain viable and not destroyed because foodborne illness tragedies have put them out of business. They do that by addressing such issues as:

Are the operation's personnel trained to handle food safely?
Are the product recipes really low risks for microbial hazards (non-time/temperature control for safety (non-TCS) foods)? How about foods that require acid to control microbial hazards?
Are there other hazards, such as physical or chemical hazards, that may render the food unsafe?
Are the products prepared consistently with the recipes to ensure safety?
Are there other domestic activities being conducted in the area besides the person preparing the food that may contaminate it, such as dishwashing, clothes washing, cleaning, tending babies or pets?
Is the equipment sufficient to produce a safe product?
Are the ingredients stored and handled in a way that they are free of rodents and insects?
Are the food preparers not ill when handling the food product?
Is the water supply potable?
Are the raw agricultural materials handled in a way to prevent cross-contamination of the finished product? How about the solid and liquid waste?

All of these and more are factors that the health inspector can assist the business owner in identifying and correcting before the product is made and potentially endangers someone's safety.

2. The proposed rules send confusing food safety messages to consumers and leave cottage food businesses and consumers unprotected.

The proposed rules require that the consumer is informed and must be provided contact information for the cottage food operations by a clearly legible label on the product packaging or a clearly visible placard at the sales or service location.

A label statement or placard, in this context, is not protective of public health. While company contact information is an important part of all food labeling schemes, it is designed to be reactive. Its purpose is to provide the consumer or the regulatory body the information needed to contact the producer of the product *after* someone has been damaged by it. It is needed to seek reparations and to help prevent further damage.

Labeling a product made in a home kitchen is a great way to tell consumers that this food is regulated *differently* than their traditional counterparts. However, allowing food sold with no regulatory oversight jeopardizes food safety. There must be middle ground that achieves minimal oversight to allow these businesses to flourish AND protects the public health. Removing these foods from any regulatory oversight not only puts the cottage food producer at risk, but also puts public health at risk too.

The Food Safety Modernization Act, enacted in 2011, requires food processors to institute systems in their operations that prevent food hazards. This law contains an exemption to for these very small processors who sell directly to end-users. However, there is a catch. They must document either that they have oversight by an appropriate regulatory body or they have identified potential hazards in the food being produced, are implementing preventive controls to address them and are monitoring to ensure the controls are effective. IDHW's proposal leaves cottage foods businesses with no oversight and few means to comply with federal law. IDHW's proposed exemption walks away from creating a buffer between the Idaho cottage foods industry and the federal government.

NWFPA appreciates and supports that IDHW seeks to improve the safety of the food supply for Idahoans. However, we respectfully disagree with the proposal to exempt cottage foods businesses from regulatory oversight by the agency. We believe that the AFDO model serves as a good compromise for the special needs of these very small businesses, assists them in complying with federal law, and is sufficiently protective of public health. Furthermore, reasonable oversight in the AFDO model provides consistency consumers depend upon when purchasing foods regardless of their location. We believe this approach will help that sector grow their businesses and become viable contributors to their communities. We urge the language in Section 001.04(h), Sections 110.06, 110.07 and 110.13 a&b, and the language added to Section 620, of the docket be struck from the rule and the remainder of the rule (Docket No. 16-0219-1501) be accepted.

We strongly support the AFDO model and appreciate the incorporation of AFDO principles in the bulk of this rule. However, we cannot support the divergent direction the IDHW has taken with respect to cottage foods. We hope Idaho retains some reasonable level of oversight for the burgeoning cottage food industry that ensures public safety. Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script that reads "Ian Tolleson".

Ian Tolleson
Vice President, Government Affairs